UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- x

UNITED STATES OF AMERICA,

       -against-   18-cr-0115 (LAK)

WAYNE JEFFERSON,

                  Defendant.
- x

ORDER

LEWIS A. KAPLAN, *District Judge.*

        Defendant was convicted on his plea of guilty to distribution and possession with intent to distribute cocaine and sentence principally to a term of imprisonment of 60 months. He now moves for compassionate release, arguing among other things that he has conditions that predispose him to a serious negative outcome should he contract COVID-19. The government opposes the motion. It asserts that defendant has failed to demonstrate the existence of exceptional and compelling circumstances warranting a sentence reduction, in some part because he declined in January the BOP's offer to administer the Moderna vaccine to him and, in any case, that he had not demonstrated that a reduction would be appropriate in any case in view of the Section 3553(a) factors.

        The Court agrees, substantially for the reasons articulated by the government. It writes to emphasize only two points.
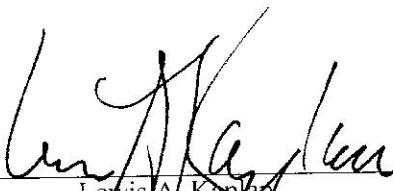
        First, defendant's counsel's argument that defendant's refusal to be vaccinated should not weigh against him because vaccine hesitancy is a serious public health problem is unpersuasive. He is right, of course, that vaccine hesitancy is a serious public health problem. But that cuts exactly the other way, as discounting the defendant's decision to refuse to mitigate his risk of contracting COVID and granting a sentence reduction could aggravate, not lessen, the public health problem caused by such hesitancy. And the fact that defendant claims that the manner in which he was offered the vaccine was not sufficiently reassuring does not improve his position on this application.

        Second, defendant claims that he has quite a list of what he terms "co-morbitities." In fact, most of the conditions listed are not listed as co-morbidities by the CDC.

        Motion denied.

        SO ORDERED.

Dated: April 28, 2021

                                        Lewis A. Kaplan
                                United States District Judge